U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, DC 20530*

March 17, 2000

Melvin P. Kopecky, Esq.
Kopecky & Roberts
P.O. Box 128
Washington, Georgia 30673

Dear Mr. Kopecky:

This refers to Act No. 224 (1999), which amends the city charter to change the method of election for the city council to numbered posts with staggered terms (2-3) and a majority vote requirement, and provides an implementation schedule for the City of Tignall in Wilkes County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your most recent responses to our October 4, 1999, request for additional information on January 21 and March 3, 2000.

We have carefully considered the information you have provided, as well as Census data, and information and comments from other interested persons. According to the 1990 Census, the City of Tignall's population is 43 percent black. The city's five-member council is elected at large by plurality vote to four-year concurrent terms. Prior to 1999, only one member of the city council was black. The black councilmember ran for office in 1991 and 1995, and placed fifth in a field of eight candidates in 1991 and third in a field of six candidates in 1995, just one vote ahead of the fourth and fifth place candidates. Based on our analysis of the available information, it appears that voting in Tignall is racially polarized and that minority voters under the existing system have achieved some success by limiting the number of votes that they cast for city council seats in order to elect their candidate of choice. This technique is referred to as single-shot voting. Under the proposed system, each seat on the council that is up for election will be identified as a separate post and candidates will compete against one another for that specific post. This will eliminate the opportunity minority voters have had under the existing system to boost the effectiveness of their vote for their preferred candidate through single-shot voting.

The imposition of numbered posts and a majority vote requirement, in addition, are more likely to result in head-to-head contests between minority and white candidates for the city council. Minority candidates who are forced into head-to-head contests with white candidates in this racially polarized voting environment are more likely to lose than would be the case under the existing system with concurrent

terms and a plurality vote requirement.

We have also examined the implications for minority voters of staggering the terms of councilmembers, so that only two members are elected in one election cycle and three members are elected the next. In this context, it appears that staggering council terms will reduce the opportunity of minority voters to elect their candidate of choice through single-shot voting by reducing the number of positions to be voted upon and, thereby, limiting the effectiveness of this vote-withholding technique. The 1991 and 1995 election results appear to support this conclusion because the minority-preferred candidate won, but placed fifth and third, respectively, in contests in which only a few votes separated the winning and losing candidates.

It appears, therefore, that the city's proposed addition to its at-large election system of numbered posts, a majority vote requirement and staggered terms will lead to a worsening of minority electoral opportunity, which is prohibited by Section 5. See Beer v. United States, 425 U.S. 130, 141 (1976)("the purpose of [Section] 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise"); 28 C.F.R. 51.54.

We are aware that the city implemented these proposed changes without preclearance in the November 1999 municipal election, and that fewer than five candidates qualified for the five council positions. We are also aware that two of the candidates who did qualify were black. However, the November 1999 election does not appear typical of city council elections in Tignall. First, the election occurred after we requested additional information about the proposed changes in October 1999. There may well have been concern among some candidates about the legality of the election scheme since the city chose to implement the changes in election method without the requisite preclearance under Section 5. Second, the fact that candidates for at least three seats on the council were required under the unprecleared staggered term implementation schedule to select two-year terms may also have resulted in fewer candidates qualifying for city council than the number of seats that were up for election.

The city maintains that the proposed changes were necessary to preclude the possibility of a complete turnover of the city council in a single election year. Yet, the city presented no convincing evidence that this feared occurrence had ever happened or was likely to happen in the future. Moreover, the addition of numbered posts and a majority vote requirement do not address the proffered concern of council turnover, and therefore appear to be wholly without support.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed addition of numbered posts, staggered terms and a majority vote requirement to the method of electing councilmembers for the City of Tignall.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained the change to numbered posts, staggered terms and a majority vote requirement continue to be legally unenforceable. See 28 C.F.R. 51.10.

Because the staggered term implementation schedule is directly related to the objected-to change to staggered terms, no determination by the Attorney General is required or appropriate at this time with respect to the implementation schedule. See 28 C.F.R. 51.22 (b) and 51.35.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Tignall, plans to take concerning this matter. If you have any questions, you should call Judybeth Greene (202) 616-2350, an attorney in the Voting Section.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division